

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the matter of</b>	)	
<b>Connect America Phase II Challenge Process</b>	)	<b>WC Docket No. 14-93</b>
	)	<b>DA 14-1397</b>
<b>Reply Submitted By</b>	)	
<b>Jade Communications, LLC</b>	)	

**To: Wireline Competition Bureau**

**STATEMENT OPPOSING SERVED-TO-UNSERVED CHALLENGES  
FILED BY  
FAIRPOINT COMMUNICATIONS AND CENTURYLINK**

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Jade Communications, LLC (Jade), by its attorney, pursuant to the Commission’s September 26, 2014 *Public Notice*, DA 14-1397, hereby submits its Statement regarding various “served-to-unserved” Census Block challenges filed by Fairpoint Communications, Inc. and CenturyLink, Inc. relating to various Census Blocks in the following four Colorado Counties: Costilla, Alamosa, Rio Grande, and Conejos. In reply thereto, the following is respectfully submitted:

**Summary**

1) Jade offers and provides both unlimited Broadband Internet service and fixed telephone voice service to more than 1800 subscribers throughout the area which includes the challenged Census Blocks. Jade utilizes the Cambium PMP 450 product produced and distributed by Cambium Networks <http://www.cambiumnetworks.com/products/pmp/pmp-450> to offer and to provide unlicensed, unlimited Broadband Internet and fixed telephone voice services to the public. Jade’s public offering of Broadband Internet and fixed telephone voice services can be viewed at [www.gojade.org](http://www.gojade.org). Click on the “Fill Out Application For Service” link to see Jade’s broadband Internet services and rates: <http://www.emailmeform.com/builder/form/8Q9Zlac5tbi4w>. Click on the “Digital Phone PDF” link for Jade’s fixed telephone voice service rates:

<http://www.gojade.org/documents/Application%20for%20Digital%20Phone%20Service.pdf>. As explained below, the Commission should reject Fairpoint Communications' and CenturyLink's separate efforts to change the Commission's initial determination that the challenged Census Blocks currently receive qualifying unsubsidized Broadband Internet and fixed telephone voice services.

2) The Commission established four criteria to examine in determining whether an area is adequately served by an unsubsidized carrier: 1) the provider must actually be offering voice and broadband service in the census block; 2) the provider must have voice and broadband-capable physical assets in or adjacent to the census block at issue; 3) the provider must either have customers in that Census Block or previously had customers in the Census Block and be willing and able to provision service to a customer in the Census Block, without the expenditure of extraordinary resources, within 10 or fewer days or must otherwise demonstrate that its service offering in the area is real and not merely a temporary or hypothetical service offering designed to defeat a request for support; and 4) the provider's Broadband Internet and fixed telephone voice service rates must be "reasonably comparable" to services and rates offered in urban areas. *See Report and Order*, DA 14-1569, ¶ 2 (WCB released October 29, 2014); *Public Notice*, DA 14-864, ¶ 9 (WCB released June 20, 2014); *Report and Order*, DA 13-1113, ¶¶ 3, 16 & n. 38 (WCB released May 16, 2013). As discussed more fully below, Jade's services meet these requirements.

### **1. Jade Offers Unsubsidized, Unlimited Broadband Internet and Voice Services in the Subject Census Blocks**

3) Jade offers and provides unsubsidized, unlimited Broadband Internet and fixed telephone voice service to over 1800 current subscribers, including approximately 300 who subscribed the Jade's fixed telephone voice service. These customers reside in the four Colorado Counties served by Jade: Costilla, Alamosa, Rio Grande, and Conejos. Exhibit 1 hereto is a Transmission Site/Service Area Map prepared by Jade's mapping consultant upon which have been placed the

challenged Census Blocks, Jade's network Access Point transmitter sites, and Jade's service area to show the relationship of their physical locations. The Transmission Site/Service Area Map references Jade's network Access Point transmitter sites via letter designation. Exhibit 1 page 2 of 2 is a key associating the letter designations shown on the transmitter site map to the physical location of Jade's transmission sites. Each transmission site generates a 15 mile service area and the Transmission Site/Service Area Map shows the composite 15 mile cloud service contour which is generated by Jade's network Access Point transmission sites.<sup>1</sup>

4) Jade advertizes its unlimited Broadband Internet and fixed telephone voice services throughout the Census Block areas in several ways including its website found at: <http://www.gojade.org>. Copies of Jade's Broadband Internet service and Digital Phone service applications are attached hereto as Exhibit 2, at page 1 of 9 (Broadband Internet) and at page 4 of 9 (fixed telephone voice service). To view Jade's various Broadband Internet service and rate plans online go to <http://www.gojade.org> and click on the "Fill Out Application For Service" button: <http://www.emailmeform.com/builder/form/8Q9Zlac5tbi4w>. To view Jade's fixed telephone voice service offering and rate plans click on the "Digital Phone PDF" button: <http://www.gojade.org/documents/Application%20for%20Digital%20Phone%20Service.pdf>.

5) Jade offers an interactive online service availability tool through which potential customers can insert their address and other contact information to ascertain whether Jade's services are available at a given location. See [http://www.gojade.org/qualify/qualify\\_template.html](http://www.gojade.org/qualify/qualify_template.html);<sup>2</sup> see also Exhibit 3, screen shots of Jade's interactive service availability tool. To use the interactive service availability tool for purposes of this proceeding: 1) insert "dummy" address/contact

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<sup>1</sup> In the field the height and orientation of a subscriber's receive/transmit equipment is adjustable and service can extend beyond 15 miles.

<sup>2</sup> From Jade's home page at [www.gojade.org](http://www.gojade.org) click the "Check for Service" link.

information into the tool consisting of “Alan Wehe” for the name and Jade’s office address and phone number as the service address (129 Santa Fe, Alamosa, CO 81101, 719-589-5140); 2) click the “Map Me!” button. Jade’s service availability tool will generate a pushpin at the address location and will show which of Jade’s towers are capable of providing service at that location. A user of Jade’s service availability tool is able to zoom in and out to get a smaller or bigger view of Jade’s service area. A neat feature of Jade’s service availability tool is a function which enables the prospective customer to click/hold the pushpin and drag it to other areas to see the extent of Jade’s service area.<sup>3</sup>

## **2. Jade Has Physical Assets Serving the Challenged Census Blocks**

6) The Transmission Site/Service Area Map, Exhibit 1, shows Jade’s wireless transmission system in relation to the challenged Census Blocks. Jade’s service contours cover the challenged Census Blocks and Jade satisfies the requirement that it have “physical assets in or adjacent to the census block.” *Public Notice*, DA 14-864, ¶ 9 & n. 17 (WCB released June 20, 2014). Jade provides its Broadband Internet and fixed voice telephone services utilizing unlicensed Cambium Network wireless assets as deployed and as depicted on the map shown at Exhibit 1. Exhibit 4 hereto are the spec sheets for the Cambium Network Access Point and Subscriber Equipment used in Jade’s network. Through these wireless facilities Jade is capable of serving the populated areas throughout Costilla, Alamosa, Rio Grande, and Conejos Counties located in Colorado. Moreover, Jade is capable of serving the subject challenged Census Blocks and as shown in Exhibit 1, Jade is providing service to the challenged Census Blocks.<sup>4</sup>

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<sup>3</sup> Jade is currently in the environmental review/air study phase of a project to add two additional transmitter locations in the Monte Vista, CO area. *See* FAA studies 2014-ANM-2667-OE (pending) & 2014-ANM-2269-OE (approved).

<sup>4</sup> The Transmission Site/Service Area Map, Exhibit 1 hereto, shows partial coverage of several Census Blocks in the Northeast area of Alamosa County. However, “[a]ny partially served

### 3. Jade Has Many Customers In the Area Which Surrounds the Challenged Census Blocks

7) Jade currently provides the Broadband Internet and/or fixed telephone voice services described above to approximately 1800 subscribers, a number which includes approximately 300 fixed telephone voice subscribers, in the four county area shown in Jade's Transmission Site service Area Map found at Exhibit 1 hereto. Jade has been reporting provision of Broadband Internet and fixed telephone voice service on FCC Form 477 in the area since 2008, if not earlier. *See* Exhibit 6 hereto, a copy of pertinent portions of the Commission's list of 2008 FCC Form 477 Local Exchange Telephone or Interconnected VoIP Filers as of December 31, 2008 (Part I for Broadband Internet service and Part II for fixed telephone voice service) which Jade obtained from the Commission's website at <http://transition.fcc.gov/wcb/iatd/comp.html>. Jade's provision of Broadband Internet service and fixed telephone voice service predates by several years the Commission's 2011 changes to, and implementation of, the reformation of USF fund distribution. Jade's provision of Broadband Internet service and fixed telephone voice service in the relevant area is neither temporary nor hypothetical. *Report and Order*, DA 13-1113, ¶ 16 & n. 38 (WCB released May 16, 2013). Jade has been providing actual service in the subject area for years. Accordingly, Jade satisfies the requirement that it is an actual provider of Broadband Internet and fixed telephone voice service.<sup>5 6</sup>

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census block will be treated as served.” *Report and Order*, DA 13-1113, ¶ 22 (WCB released May 16, 2013). Exhibit 5 hereto provides a close up view of the partial coverage area. One very small Census Block in that area, 080039600002082, falls just outside of the service cloud shown in Exhibit 1. However, as noted above, adjustments to subscriber antenna mounting will extend Jade's service and it is very likely that Jade could provide service to this Census Block within 10 or fewer days after request for service is made without extraordinary financial expenditure.

<sup>5</sup> Jade routinely initiates service within seven days after receiving a service request.

<sup>6</sup> Redacted customer records would be provided promptly upon request. With extremely limited exception discussed in footnote 8 below, neither challenger made any allegation which is specific to the provision Jade's services, not even a reference to Jade's website. The challenges

8) Regarding whether an area is served the Commission determined “that it would be appropriate to exclude any area served by an unsubsidized competitor and we delegate to the Wireline Competition Bureau the task of implementing the specific requirements of this rule.” *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 ¶ 170 (FCC released November 18, 2011). The WCB was concerned that areas eligible for funding and legitimate requests for USF funding might be obstructed by temporary or hypothetical claims of service made by unsubsidized service entities. Accordingly, the WCB adopted a best evidence rule because the best way to deter obstructive challenges would be actual service by the unsubsidized carrier within the challenged Census Block. *Report and Order*, DA 13-1113, ¶ 16 & n. 38 (WCB released May 16, 2013).<sup>7</sup> However, other forms of service evidence submitted by respondents were not excluded. It is respectfully submitted that Jade has provided “concrete and verifiable evidence supporting their claims that the challenge should not be granted.” *Id.*, ¶ 17.

9) Moreover, it cannot go unnoticed that there are literally thousands and thousands of Census Blocks in the four county area served by Jade. It would just be random chance of

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consist of general allegations based upon inferences gleaned from industry information and reports. Rather than produce redacted customer records in response to non-specific allegations, and run the risk of an inadvertent CPNI violation, Jade’s summary testimony regarding its records is an adequate rebuttal, especially where the status quo is the Commission’s finding that the challenged Census Blocks are adequately served.

<sup>7</sup> The WCB adopted the “best evidence” rule in the context of an unsubsidized carrier submitting a challenge regarding a Commission determination that an area is unserved, and even in that context the Commission will consider other “forms of evidence.” *Report and Order*, DA 13-1113, ¶ 16 (WCB released May 16, 2013). Instantly, the Commission has determined that the areas at issue are served by unsubsidized carriers and Jade is responding to challenges in defense of the Commission’s determinations. When a carrier is defending the Commission’s determination that an area is served, there is a much lower probability that the unsubsidized carrier is “gaming the system” since the unsubsidized carrier is merely offering information which corroborates other information already possessed by the Commission. To the extent that rule waiver is required on this point, Jade respectfully submits that it had submitted adequate information regarding the existence of its facilities and services in the subject area to warrant waiver.

astronomical proportions for Jade to have customers in the approximately 50 Census Blocks pointed to by the challengers as being unserved. Indeed, because the challengers' challenges are so extremely limited in the context of the large number of the Census Blocks which exists in Jade's service area, the challengers implicitly concede that the large number of surrounding Census Blocks are served by unsubsidized carriers. Given the fact that even the challengers concede that qualified, unsubsidized services are available nearly universally within Jade's service area, and given the fact that the challengers failed to provide specific factual allegations regarding service unavailability, but rather rely upon data interpretation, the reasonable inference is that the challengers' methodologies are substantially flawed.

#### **4. Jade's Unlimited Broadband Internet and Fixed Telephone Voice Services Are Reasonably Comparable to Offerings In Urban Areas**

10) Jade's Broadband Internet Service: The Commission has established that a minimum reasonably comparable urban Broadband Internet speed would be 4 Mbps/1 Mbps. *Report and Order*, DA 13-1113, ¶ 6 (WCB released May 16, 2013); *Report and Order*, DA 14-1569, ¶ 10 (WCB released October 29, 2014). Jade's Broadband Internet service plans offer a variety of connection speeds and each of the plans provides for unlimited usage. For example, Jade's slowest Broadband Internet service offering provides an unlimited 5 Mbps/1 Mbps Broadband Internet service for \$39.99. See Jade's Broadband Internet service request application at: <http://www.emailmeform.com/builder/form/8Q9Zlac5tbi4w>; see also Exhibit 2 hereto, page 2 of 9 (Jade's Broadband Internet service application form). Jade's slowest service offering at 5 Mbps/1 Mbps is somewhat faster than the Commission's 4 Mbps/1 Mbps minimal standard.

11) The Commission has determined that for 2014 a reasonably comparable urban rate for the Commission's minimal level unlimited 4 Mbps/1 Mbps Broadband Internet service, slightly slower than Jade's unlimited lowest tier 5 Mbps/1 Mbps Broadband Internet service, is \$74.31.



*Report and Order*, DA 14-1569, ¶ 10 (WCB released October 29, 2014). Jade’s unsubsidized, unlimited Broadband Internet service is offered at prices beginning at \$39.99 for 5 Mbps/1 Mbps. *See* Exhibit 2, page 2 of 9 (Jade’s Broadband Internet service/rate plan). Jade’s unsubsidized price for Jade’s minimal unlimited service level offering, a minimal service which is faster than the Commission’s minimal speed standard, is priced at nearly one-half of the Commission’s recently established reasonably comparable urban rate. Jade’s peak time “round trip” latency is under 70 ms and Jade’s customers usually experience much lower latencies, well under the Commission’s 100 ms benchmark. *Public Notice*, DA 14-942, at 2 (WCB released June 30, 2014). Moreover, the Commission determined that Broadband Internet service “providers that meet the speed requirement generally meet our other performance criteria. For administrative ease, therefore, we conclude that it is reasonable to presume that providers that provide broadband of the required speed also meet the non-speed broadband criteria, with that presumption subject to rebuttal in particular instances.” *Report and Order*, DA 13-1113, ¶ 7 (WCB released May 16, 2013). With limited exception, neither challenger directly challenges any non-speed aspect of Jade’s Broadband Internet service with specific evidence.<sup>8</sup>

12) Jade’s Fixed Telephone Voice Service: Jade offers fixed telephone voice service through its wireless physical assets discussed previously in this Statement. *See*

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<sup>8</sup> As discussed above, the challenges consist almost entirely of general allegations based upon inferences gleaned from industry information and reports. CenturyLink’s Exhibit 11 tries to argue, we think, that Jade’s voice service is not a qualified service because Jade’s fixed telephone voice service application form indicates that 911 service would be unavailable in the event of equipment or power supply failure. However, that is no different from a landline 911 service being unavailable if the CPE becomes defective, or if a line goes down, or if service is disconnected, or if dial tone is lost. Moreover, CenturyLink’s 911 argument concedes the existence of Jade’s unsubsidized fixed telephone voice service. CenturyLink’s filing was voluminous, poorly indexed, and contains numerous attachments visible in the ECFS totaling hundreds and hundreds of pages, precious few of which had descriptive names. We could find no other challenge allegation which seems directed specifically toward Jade. Please let us know if we missed an allegation specific to Jade which should be addressed and we will promptly supplement this Statement.

<http://www.gojade.org/documents/Application%20for%20Digital%20Phone%20Service.pdf>;

*see also* Exhibit 2 hereto, at page 4 of 9. The Commission has recently determined that the reasonably comparable urban rate for fixed telephone voice service is \$37/month. *Report and Order*, DA 14-1569, ¶ 13 (WCB released October 29, 2014). Jade’s unsubsidized stand-alone fixed telephone voice service is a qualified “reasonably comparable” service because it is priced at \$24.95/month which is well below the Commission’s established \$37/month “reasonably comparable” standard.<sup>9</sup>

WHEREFORE, in view of the information presented herein, it is respectfully submitted that the Commission should find that Jade offers unsubsidized, reasonably comparable Broadband Internet and fixed telephone voice services in the challenged Census Blocks, that the challenged Census Blocks should continue to be classified as adequately served by an unsubsidized service provider, and that the challenged Census Blocks continue to be found ineligible for USF funding.

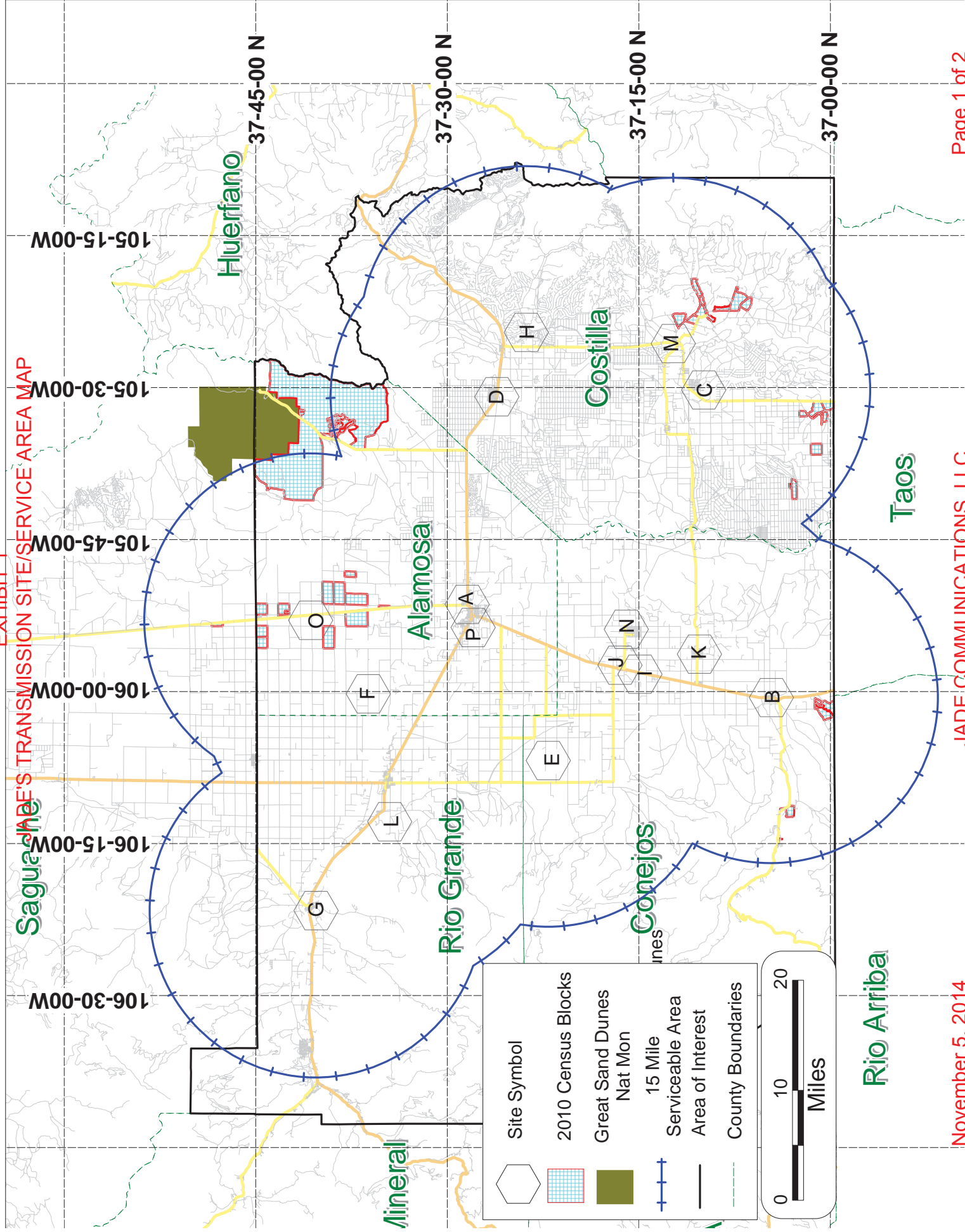
Respectfully submitted,  
JADE COMMUNICATIONS, LLC

Hill & Welch  
1025 Connecticut, N.W. #1000  
Washington, D.C. 20036  
(202) 857-1470  
(301) 622-2864 (FAX)  
[welchlaw@earthlink.net](mailto:welchlaw@earthlink.net)  
November 10, 2014

/s/ Timothy E. Welch  
Its Attorney

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<sup>9</sup> A discounted fixed telephone voice service price of \$19.99 is available if Jade’s Broadband Internet service is also purchased.



**EXHIBIT 1**  
**JADE'S TRANSMISSION SITE/SERVICE AREA MAP**

Map Tower Reference Identifier	Location Name	Latitude	Longitude	FCC ASR #
A	Alamosa 129 Santa Fe	N 37-28-26.5	W 105-51-21.8	1057226
B	Antonito 5318 County Rd 14, antonito Co 8112C	N 37-04-12.8	W 106-0-10.3	1235597
C	AT&T tower South San Luis 1124 Highway 159 San Luis Co 81152	N 37-9-55.0	W 105-30-12.0	1024241
D	Blanca, 506 Smith Blanca Co 81123	N 37-26-11.8	W 105-30-59.3	1024307
E	Capulin 25758 county road 35 La Jara, co 8114C	N 37-22-2.4	W 106-6-49.0	1219186
F	County Line AT&T (Monte Vista & Alamosa)	N 37 -36-11.1	W 106-00-11.4	
G	Del Norte - top D mtn	N 37-40-16.5	W 106-21-34.74	
H	Fort Garland 2462 Lita Kean road, Fort Garland Co 81133	N 37-23-49.0	W 105-24-29.0	1024308
I	La Jara - High School 17890 U.S. 285, La Jara, CO 8114C	N 37-14-54.8	W 105-58-15.3	
J	La Jara -Elementary	N 37-16-28.6	W 105-57-21.6	
K	Manassa	N 37-10-15.1	W 105-56-16.3	
L	Monte Vista - Lariat	N 37-34-30.7	W 106-12-48.9	1281445
M	San Luis - 14473 Amigo Road San Luis Co	N 37-12-18.0	W 105-25-37.0	1024309
N	Sanford	N 37-15-58.8	W 105-53-49.0	1237700
O	Sangre De Cristo school 8751 Lane 7 North • Mosca, CO 8114C	N 37-40-42.01	W 105-52-55.78	1280319
P	Alamoasa WT	N 37-27-58.6	W 105-53-38.6	

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